

REMARKS

The Office Action of August 13, 2007 has been reviewed and the Examiner's comments carefully considered. Claim 5 has been amended by way of this Amendment. Accordingly, claims 1-34 are currently pending in this application, and claims 1, 19, 22, and 27 are in independent form.

Allowable Subject Matter

Initially, the Applicant thanks the Examiner for indicating that the subject matter of claims 8-12 and 15-34 define over the prior art of record. Specifically, the Examiner has indicated that claims 19-34 are allowed, and that claims 8-12 and 15-18 would be allowable if rewritten in independent form including the base claim and any intervening claims.

Claim Objections

The Examiner has objected to claim 3 as containing an informality. Specifically, the Examiner has objected to claim 3 since there is no appropriate antecedent basis for "housing". Claim 5 has been amended to recite that the hub includes a detent. Applicant respectfully requests withdrawal of the objection. Applicant notes that claim 5 has only been amended to correct a minor typographical error. Applicant intends no change in the scope of claim 5.

35 U.S.C. §102 Rejections

Claims 1-7, 13, and 14 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 4,887,998 to Martin et al. (hereinafter "Martin"). Applicant respectfully traverses this rejection.

Broadly, Martin discloses a hypodermic needle guard for use with a hypodermic needle and collection tube that covers the needle after use in order to prevent inadvertent needle sticks. In a retracted position a needle sheath (25) comprises a hook (29) that engages a catch (31) disposed in a needle base (21). The sheath (25) is biased from a retracted position (shown in Figure 4) to a fully extended position (shown in Figure 5) by a spring (27). The hook (29) on sheath (25) is held in engagement with the catch (31) on the needle base (21) by a release collar

(17), thus preventing the sheath (25) from moving to the fully extended position by operation of the spring (27). When the release collar (17) is displaced toward the tip of the needle (19) by pressing ampule (11) into the base of ampule holder (13), hook (29) is released from engagement from catch (31) and sheath (25) is free to move from the retracted position to the fully extended position by operation of the spring (27) as is shown in Figure 8, thereby covering the tip of needle (19) (Figures 3-5 and 8 and column 2, line 60 through column 4, line 19).

Applicant respectfully submits that a claim is anticipated under §102 only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference (MPEP §2131). Applicant respectfully submits that the disclosure in Martin is not sufficient to anticipate independent claim 1 under §102.

With regard to claim 1, the claim recites the limitation of “a **retaining member** engageable with the shield, the retaining member being distinct from the lock” and further “wherein **after** activation of the actuator and **release** of the lock, the **retaining member engages the shield**, and wherein **the shield is prevented from moving to the fully extended position until the retaining member is disengaged from the shield**”. Applicant respectfully submits that Martin does not teach or suggest such a retaining member.

Martin, rather, discloses a needle guard assembly with a needle sheath (25) that is fully released into an extended position covering the tip of needle (19) after the release collar (17) is displaced and hook (29) is freed to disengage from catch (31). Martin does not teach or suggest any further retention mechanism for preventing needle sheath (25) from moving to the fully extended position after displacement of the release collar (17) (see Figures 3-5 and 8 and column 3, line 56 through column 4, line 2).

The Examiner, in the current rejection, indicates that reference number (25) in Martin corresponds to Applicant's claimed retaining member. Applicant respectfully disagrees. Reference number (25) in Martin refers to the needle sheath **itself** and **not to any mechanism for retaining the sheath from moving into a fully extended position**. Martin teaches no further retention of the needle sheath (25) other than in the fully retracted position by the release collar (17) and detent (31).

In fact, the passage of Martin at column 2, line 65 through column 3, line 7, specifically describes actuation of Martin as follows:

After a blood sample is extracted but prior to withdrawal of the needle from the arm, the ampule 11 is forced to the bottom of the ampule holder 13 which causes extension of the release collar 17 as shown. This in turn allows disengagement of the hook 29 and the spring 27 forces the protective sheath 25 towards the skin. As the needle 19 is withdrawn from under the skin, the protective sheath simultaneously slides towards and just beyond the tip, at which point the ball 37 is forced into the chamber 41 effectively and irreversibly encapsulating the needle tip.

The only thing in Martin preventing movement of the sheath (25) after release of the hook (29) is the patient's skin surface, not any separate and distinct retaining member, as recited in the claimed invention. The rejection is therefore improper.

Applicant respectfully submits that claim 1 is allowable over Martin for at least the foregoing reasons. Applicant respectfully requests that the Examiner withdraw the rejection of claim 1 for being anticipated by Martin under §102(b).

Claims 2-7, 13, and 14 are all dependent upon independent claim 1 and are allowable over Martin for at least the same reasons as claim 1. Applicant respectfully requests that the Examiner withdraw the rejection of claims 2-7, 13, and 14 for being anticipated by Martin under §102(b).

Request for Telephonic Interview

Applicant would like to note that a Request for Continued Examination has previously been filed in the current application. As such, Applicant and the undersigned respectfully request the courtesy of a telephone interview prior to the issuance of another Office Action to address any questions that the Examiner might have or to discuss any specific claim language that the Examiner believes will more clearly set forth the subject matter of the claims without limiting the scope of the claims.

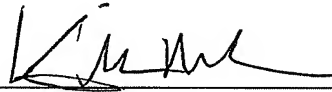
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Based on the foregoing amendments and remarks, entry of the above amendments, reconsideration of the rejections and allowance of pending claims 1-7, 13, and 14 and continued allowance of claims 8-12 and 15-34 is respectfully requested.

Respectfully submitted,

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